SUPREME COURT, U.S.

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

No. 71-415

COLORADO RIVER WATER CONSERVATION DISTRICT *Petitioner,*

vs.

ROCKY MOUNTAIN POWER COMPANY, et al., *Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

BRIEF IN OPPOSITION FOR RESPONDENT ROCKY MOUNTAIN POWER COMPANY

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QUESTION PRESENTED

Whether a State Court in a water right adjudication may properly reject work done by the US Bureau of Reclamation as insufficient to establish a priority date for water rights claimed by an agency of the State which is not the assignee of any rights from, and is not the agent of or in privity with, the US Bureau of Reclamation?

STATEMENT

The statement of the case by the Petitioner omits the following essential facts.

The Flattops Project was not designated as a participating project in the Yampa-White Report (f. 1465). After reviewing that report, the Bureau of Reclamation recommended that there be no further study of the Flattops Project until development was imminent which would require water for domestic use or for large power development (ff. 2078-2079). If and when the Bureau desired to construct this project, an investigation would first be undertaken to demonstrate the actual economic feasibility of the project. An authorizing report would then be submitted to the Department of Interior for approval, and to the states for comment, and then to the Congress to determine whether the project should be authorized for construction (f. 2096). None of these steps was taken by the Bureau or by the Petitioner prior to October 1961.

There was no showing of any agency relationship between the Bureau and the Petitioner, nor any showing that the Bureau had assigned to the Petitioner such inchoate rights as might arise from preliminary reconnaissance work done (f. 2069). The Petitioner has no statutory or other power to reserve water for projects which the Bureau of Reclamation has studied, much less projects which the Bureau has not even sought authority to construct.

ARGUMENT

The issues presented here are in all respects identical with those presented in *Colorado River Water Conservation District v. Four Counties Water Users Association*,

wherein this Court denied certiorari (389 U.S. 1049 (1968)) and denied a petition for rehearing of such denial of certiorari (390 U.S. 976 (1968)).

The powers and authority of the Petitioner here are set forth in the Colorado statutes under which the Petitioner was organized and now functions, and in the decisions of the Supreme Court of the State of Colorado construing and applying such statutes. The most recent such decision is the decision of the Supreme Court of Colorado sought to be reviewed in this proceeding. The Colorado court correctly described the Petitioner as "a water conservation district, formed and empowered under state statute," and pointed out that no privity has been shown to exist between the Petitioner and the United States. (Appendix A to Petition, pages A-5 and A-6).

The United States has standing, of course, to appear voluntarily in Colorado water adjudication proceedings and at various times has done so. (See for example, *City & County of Denver v. Northern Colorado Water Conservancy District*, 130 Colo. 375, 418-421, 276 P2d 992 (1954)).

In addition, two recent decisions of this Court confirm the fact that the United States has consented to be made a party in such proceedings and may properly be named as such and served with process. These are the cases of *US v. District Court for Eagle County*, 401 U.S. 520 (1971), and *US v. District Court for Water Division No. 5*, 401 U.S. 527 (1971).

The present petition does not state, and undersigned counsel have no information, whether the United States was in fact named as a party or served with notice in the present proceedings. The essential point is, however,

that the United States has at all times had full opportunity and standing to appear in the water adjudication proceeding here involved in order to assert whatever water rights it desires to claim. Petitioner appears here in the role of a self-appointed guardian of federal interests and self-appointed successor in interest to the US Bureau of Reclamation. Petitioner's claims to have any such standing in this or any court are plainly untenable.

CONCLUSION

For the foregoing reasons the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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